

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
SHIM-LARKIN, : Docket #1:16-cv-06099-
 : AJN-KNF
 :
 Plaintiff, :
 :
 - against - :
 :
 CITY OF NEW YORK, : New York, New York
 : November 21, 2017
 :
 Defendant. :
 :
 ----- : PHONE CONFERENCE

PROCEEDINGS BEFORE
THE HONORABLE KEVIN N. FOX,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: HEENA SHIM-LARKIN, PRO SE
260 West 153rd Street - Apt. 7H
New York, NY 10039
646-763-1668

For the Defendant: NEW YORK CITY LAW DEPARTMENT
BY: DOMINIQUE F. SAINT-FORT, ESQ.
100 Church Street
New York, NY 10007
212-356-2444

Transcription Service: Carole Ludwig, *Transcription Services*
141 East Third Street #3E
New York, New York 10009
Phone: (212) 420-0771
Fax: (212) 420-6007

Proceedings conducted telephonically and recorded by
electronic sound recording;
Transcript produced by transcription service

INDEX

E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
----------------	---------------	--------------	-----------------------	----------------------

None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
---------------------------	--------------------	-----------	-----------	----------------------

None

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

3

THE CLERK: Heena Shim-Larkin v. City of New York, case No. 16-cv-6099. Ms. Shim-Larkin and counsel, please state your names for the record.

MS. HEENA SHIM-LARKIN: My name is Heena Shim-Larkin.

MS. DOMINIQUE SAINT-FORT: Dominique Saint-Fort for the City of New York.

HONORABLE KEVIN N. FOX (THE COURT): Good afternoon. This is Judge Fox. I want to address a number of writings that have come to me, letters from Ms. Shim-Larkin dated November 6, 2017; October 24, 2017; October 17, 2017; and then September 20, 2017; and also a writing from defendant's counsel dated November 16, 2017, regarding the time for a deposition for Ms. Shim-Larkin, an extension of time for a deposition.

So with respect to the letters written by Ms. Shim-Larkin, there were not responsive writings submitted by the defendant to those writings. But let me begin with the September 20, 2017, document in which Ms. Shim-Larkin requested communications -- data regarding communications and correspondence between the city's law department and its police department.

For those communications a privilege log was prepared. The privilege log I find is inadequate in that

1
2 it doesn't provide a level of details about the writings;
3 they're basically email messages is my recollection such
4 that one could, based solely on the entry and the logs be
5 able to challenge the asserted privilege. In all
6 instances, I think, save one, it is alleged that the
7 withheld writing is covered by the work-produce doctrine;
8 and in one instance, the attorney-client privilege is also
9 asserted. So there'll have to be a revised log prepared
10 with sufficient information so that one can know exactly
11 what is being held -- withheld so that an adequate
12 challenge can be made based on the privilege asserted.

13 There was an interrogatory respecting 311
14 complaints that Ms. Shim-Larkin crafted. The
15 interrogatory is not narrowly tailored to obtain
16 information about the 311 complaint or complaints that are
17 germane to this action. So the objection by the defendant
18 is sustained. This was the subject of discussion
19 previously during a conference where it was suggested that
20 Ms. Shim-Larkin should try to recraft and more narrowly
21 tailor the interrogatory.

22 There was a request for the full text of a
23 September 28, 2000, closing report by the city's
24 department of investigation, and there was an objection
25 lodged by the defendant to providing the full text of that

document. But the objection was not made timely, so the objection is waived. This, the waiver of objection, was also the subject of a previous conference and an order by the Court directing the defendant to make responses to discovery demands that had been made by Ms. Shim-Larkin without objections because the response had come untimely. I note in various writings that are the subject of today's conference that Ms. Shim-Larkin makes reference to that order, which barred the defendant from lodging objections to certain discovery demands that she had made previously.

I want to turn now to the request about the absence of a videotape from the first floor of the 13th Police Precinct. There was an affidavit submitted by the defendant to address the absence of a tape. The affidavit that was submitted garnered a protest from Ms. Shim-Larkin because it lacked detail, and she highlighted the types of information that was lacking from the affidavit that would enable her to understand more fully whether a tape existed, what happened to it, and so forth. I think to remedy the deficiencies, the defendant should provide to Ms. Shim-Larkin a more detailed affidavit respecting the absence of the videotape and responding to the specific lapses in information that Ms. Shim-Larkin highlighted.

MS. SAINT-FORT: Your Honor, if I may inquire

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

6

about that ruling? The affidavit says that there was no -- that there is no recording of that area, the 13th Precinct, in existence and that there is no policy regarding surveillance camera recordings in the first floor of the 13th Precinct. So if I could --

THE COURT: Well, that language was somewhat troubling to me because it seemed to limit things. There's no policy regarding the first floor, suggesting there's perhaps a policy that would encompass the first floor and more. And it's that lack of specificity in that affidavit that caused the protest by Ms. Shim-Larkin and also prompted me to take the position that I just indicated to you. We need to be careful and precise in the language being used in response to the discovery demands -- both parties -- so that you can gather complete information and be ready for trial or motion practice, if there needs to be motion practice, before trial. So --

MS. SAINT-FORT: Okay, so just so I understand, the greater detail that you're suggesting that the defendants provide in response to Ms. Shim-Larkin is with respect to the 13th Precinct?

THE COURT: Well, I don't have in front of me -- there were about three or four exemplars of more detailed information that Ms. Shim-Larkin had raised. And I

1
2 thought they were all appropriate and should be addressed.
3 I don't have them at my fingertips. So if you take a look
4 at that and respond to those, I think you'll provide the
5 level of detail that will enable the parties to move on
6 from that issue.

7 Ms. Shim-Larkin had raised a question about the
8 form that appears as Bates No. NYPD 002, which is a form
9 that was completed when she went to the police precinct
10 and encountered a PAA who took a statement of a complaint
11 from her. And this was the subject of discussion back in
12 the spring during our conference, and I went back to the
13 record of that conference because my recollection of what
14 I directed the parties with respect to that matter was
15 different from the texts allegedly quoted in writings from
16 both parties.

17 And during that conference I directed that the
18 defendant provide the plaintiff any directive for
19 completing that form, that is, the Bates-numbered form
20 that I indicated a moment ago. I didn't know whether
21 there were directives that exist, in particular, that
22 inform the police and their personnel how to complete that
23 form, but if there is, that should come to Ms. Shim-Larkin
24 and only that so that it will be clear how it is that the
25 PAA responded to the various inquiries that appear on that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

8

form, with the guidance that any directive about completing such a form provides. Of course, there's an interaction with Ms. Shim-Larkin, and there may have been statements made by Ms. Shim-Larkin to the PAA that also result in certain entries on that form, but back in May, the directive was to find if one exists or more than one directive or directives that instruct how the form should be completed. And that should be surrendered to Ms. Shim-Larkin.

MS. SAINT-FORT: Your Honor, if I may? The defendants have provided Ms. Shim-Larkin with the patrol guide that guides the completion of the form. We provided her with that information.

In addition, there was some questions that were asked of Ms. Shim-Larkin during her deposition regarding her interest in this information because, if you look at the complaint, it does state in the area where -- the question is whether the complainant is fearful for her life, indicating yes or no. There in that box it indicates yes, that she was fearful for her life. And Ms. Shim-Larkin indicated during her deposition that her interest in the policies regarding how an officer determines whether one is fearful for their life or not was not necessarily in reference to this case but prior

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

9

complaints that she had filed with issues regarding her ex-husband and her informing officers in those situations that she was fearful for her life, with those officers indicating no. So the information that she's seeking is totally irrelevant to this case. And it's the defendant's position that we provided her with the patrol guides that guides the completion of the form.

THE COURT: Well, that was not information that was before me previously. The focus back in May was on the discussion or the interaction that Ms. Shim-Larkin had with the PAA in the precinct and not any discussion about previously encounters with police personnel involving her former spouse and his conduct with her.

So this is new information, and, again, back in May the focus was only on the one document generated during that encounter with the PAA in the precinct. And my directive back in May was limited to that and it's still limited only to that encounter and not any other encounters that Ms. Shim-Larkin may have had based upon her relationship with her former spouse.

MS. SAINT-FORT: Defendants --

MS. SHIM-LARKIN: Your Honor -- your Honor, I want to make it clear on the record that the defendant's concept of deposition testimony wholly mischaracterized my

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

10

testimony. She asked me if that's what I wanted, though, so I -- that's no, that's not what I was looking for. What I was looking for is not that. I clearly said no, and she's completely mischaracterizing my deposition testimony.

And the other thing is she doesn't want to do meet-and-confer through my phone conversation because she wants to do meet-and-confer through a deposition of me, which is totally unfair.

THE COURT: The next matter I want to raise is the plaintiff's desire to examine 311 system calls, 154 unredacted 311 system complaint calls, to determine which are relevant to her complaint. I'm somewhat curious about that. I know that this matter of the 311 calls has emerged through information exchanged during the pretrial discovery phase of the litigation, and it's not specifically referenced in the complaint that's outstanding.

But, in any event, it is a matter that was the subject of some discussion in the previous conference, and I'm not altogether clear on why 154 calls and examination of calls is pertinent in this circumstance, in this case. So, Ms. Shim-Larkin, why is it that you say you need to examine 154 calls?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

11

MS. SHIM-LARKIN: Your Honor?

THE COURT: Yes.

MS. SHIM-LARKIN: I request this because once I saw the redacted version, then I can see what the call is about. It has brief description, such as, like, "Lifeguard arguing in front of kids." So if I see the brief description there, I can tell if it's from someone I know or if it's -- I mean, if it's talking about the instance I know or I object so I can tell -- I have pretty much good sense of -- if we have the (indiscernible) log, I know who made that call. I can -- I think I can guess who make that call.

So after I show the redacted version of the (indiscernible) then I can further explain, oh, I think this have something (indiscernible) in both the instance, I can get more detail with that, for instance, and I can get the caller ID, because it show the name and telephone number and the address of the person who made that phone call to 311. But without, if I don't even know the (indiscernible) of the call, then I don't know which call is relevant or not.

THE COURT: So the data that has been given to you about the 311 complaint forms, if I'm understanding you correctly, has the subject matter of the complaint

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

12

obscured so no one can know from reading the document what the subject of the complaint is?

MS. SHIM-LARKIN: Yes.

MS. SAINT-FORT: Your Honor, if I could provide some background? The list of 154 phone calls are phone calls that were 311 calls that were made between the time period of plaintiff's employment with the Park Department. And these are all phone calls that through the 311 database were transferred to the Department of Parks and Recreation to respond to based on issues that occurred at a Department of Parks and Recreation property. What defendant has done is, based on those responses, we've provided plaintiff with all of the complaints that had to do with Tompkins Square Mini Pool, where she worked. All 154 phone calls do not pertain to Tompkins Square Mini Pool; they pertain to Department of Parks and Recreation's property in total.

So plaintiff has been provided with the responsive complaints regarding Tompkins Square Mini Pool during the time frame in which she was employed by Parks and Recreation.

MS. SHIM-LARKIN: Your Honor, that is not the case because I received seven complaint reports from the Department of Information Technology and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

13

Telecommunications, and they gave me the random seven complaint reports. And some of the complaint reports, they don't -- on the -- there's seven complaint reports I received from Department of Information Technology and four complaints from Department of Parks. The seven complaints was at random and four complaint was there was -- appeared something at the location. And in the Location, when it says Tompkins, then that were given to me, that's the four I received from Parks. But in the seven complaint reports I received from Department of Information Technology, they -- in some of the forms, says location of this was blank.

So some of the forms had Location field is blank, that it can still be related to Tompkins Square. Just because the location leaves the space blank doesn't mean that it does not have to be Tompkins Square Park. And then some of the form is a slightly different form; it is not a DPR general intake form but it's a customer comment. And some of the 311 complaint reports are customer comments from pages of different forms, and in that form there's not even a field about location.

So even though they provided four complaint reports which happened at Tompkins Square, it doesn't mean that some of the customer comments -- maybe some of the

1 PROCEEDINGS 14

2 customer comments are related to Tompkins Square Park but
3 it did not come up to search if they searched only
4 Locations is filled with Tompkins Square Park. That's why
5 I need to see, like, other than those four complaint
6 reports.

7 THE COURT: Of the seven reports that you say
8 you received from the Information Technology Department,
9 are you saying to me that there are seven independent of
10 the four that you received, or is there an overlap so that
11 there are only three complaints that are different?

12 MS. SHIM-LARKIN: I do not understand the
13 question.

14 THE COURT: All right, you have seven reports
15 from the Department of Information Technology. Of those
16 seven, are four of them the same reports that you say you
17 got from the defendant during the pretrial discovery phase
18 of this lawsuit?

19 MS. SHIM-LARKIN: No, no, what I'm trying to
20 say, the seven complaint reports I received from
21 Department of Information Technology, I received them
22 through FOIA requests, and it was before I even started
23 this lawsuit. And so out of four complaint reports I
24 received from Parks Department, that's also through a FOIA
25 request. I received them before I even started the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

15

lawsuit.

THE COURT: Regardless of when you received them, are there four of the seven that are the same four that you received --

MS. SHIM-LARKIN: No, no. I think --

THE COURT: So there are 11 reports?

MS. SHIM-LARKIN: No, it's not 11.

THE COURT: Well, seven plus four is 11.

MS. SHIM-LARKIN: Four of ten. I think maybe one or two overlap, so maybe correct ten, I think so.

THE COURT: Well, if two overlap, then you're only talking about, instead of seven reports, five reports that are different; is that correct?

MS. SHIM-LARKIN: Yes. But my point is that I should have guessed -- I should have received that from FOIA. They just ignored my FOIA requests.

THE COURT: Well, just a minute.

MS. SHIM-LARKIN: And I --

THE COURT: Just a minute.

MS. SHIM-LARKIN: -- they ignored it. And then my point is that Rule 26 says that even the objections, they have to be warranted by existing law; and if they object, then it's not -- it's violating for them.

THE COURT: Now, of the seven that you received

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

16

from the Information Technology Department, you say that they are without indication of location.

MS. SHIM-LARKIN: Yes.

THE COURT: Okay, so how do you connect them to the pool where you worked in July and August of 2017?

MS. SAINT-FORT: 2015.

THE COURT: 2015 -- excuse me.

MS. SHIM-LARKIN: How do I connect it?

THE COURT: Yes. How do you know that they arise out of the pool at Tompkins Square Park, the mini pool, if there's no location associated with the seven?

MS. SHIM-LARKIN: Oh, that's because I said the Location field was blank, because I saw some complaints the Location field was blank but in the field of employer, some of them said Rockaway employee. And then some of them says in the Brief Description, in the Brief Description there was like the hint of it was Coney Island or in the Brief Description there was brief description about location.

So I think maybe -- I think from other fields such as Employee field or Brief Description field, I think I can -- I think I can connect, if I get a hint from those fields. And some of them -- I believe some of the events will be described very specific. And it's very specific

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

17

enough for me to recollect my memory that I think I can do that.

THE COURT: Well, I don't see why you have to project. You have seven reports; they don't say location, and if I'm understanding you correctly, some of them in the Location field is blank, but the text of the report suggests that the matters occurred in Coney Island or Rockaway, which has nothing to do with Tompkins Square Park. So once you eliminate those from the seven, how many are related to Tompkins Square Park and how do you know that?

MS. SHIM-LARKIN: So what I'm trying to say is (indiscernible) like all complaints against the (indiscernible) but I do not receive those (indiscernible) complaints to show that (indiscernible) response; they just said it was not going to exist. But I think it is exist but they don't know if they exist because the complaint is also complaint against them but they really keep the appropriate record of it.

THE COURT: Well, I was asking something different. I'm focusing on the seven documents you received from the Information Technology Department in which you told me the location of the incident that prompted the complaint is blank, but there is something

1 PROCEEDINGS 18

2 written in connection with the specific complaint --

3 MS. SHIM-LARKIN: Again, I --

4 THE COURT: -- that identifies in some instances
5 that the matter that prompted the complaint occurred in
6 Coney Island or the Rockaways. So when you remove from
7 the seven complaints that pertain to, as far as you can
8 tell, Rockaway, Coney Island or some other location other
9 than Tompkins Square Park, how many of the seven, if any,
10 relate to Tompkins Square Park?

11 MS. SHIM-LARKIN: The question is among those
12 seven complaint reports how many of them are related to
13 Tompkins Square Park?

14 THE COURT: Yes.

15 MS. SHIM-LARKIN: I think -- I don't remember;
16 maybe one or two.

17 THE COURT: Okay. So those, coupled with the
18 four that you've received, the other four, so that's about
19 six complaints you say would apply to Tompkins Square
20 Park, and you want to look at 154 other complaints so that
21 you can read the description of the complaint and from
22 that you hope to determine that the complaint is pertinent
23 to Tompkins Square Park although the defendants tell you
24 they have already isolated all of the reports that pertain
25 to Tompkins Square Park during July and August 2015, when

1 PROCEEDINGS 19

2 you worked there; is that what you're telling me?

3 MS. SHIM-LARKIN: Yes.

4 THE COURT: Okay. I don't see how going through
5 that exercise is proportional to the needs of this case,
6 and so I won't require that the 154 reports come to you
7 for examination.

8 In the October 17 writing that you submitted you
9 request, among other things, an extension of time to get
10 perhaps a forensic expert respecting a videotape. Now,
11 you have a motion outstanding seeking that the Court
12 appoint an expert witness. Are you abandoning that
13 motion? Have you now decided that you're going to engage
14 expert witnesses --

15 MS. SHIM-LARKIN: I have --

16 THE COURT: -- on your own?

17 MS. SHIM-LARKIN: -- that expert, Court to
18 appoint expert, I'm not abandoning that motion, your
19 Honor.

20 THE COURT: Well, I don't understand, then, the
21 October 17 writing. Are you looking to engage yourself a
22 forensic expert, or is this part of the motion for expert
23 witness or witnesses that you have pending?

24 MS. SHIM-LARKIN: I didn't decide yet because
25 actually it's in relation to the pending motion that -- my

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

20

first set of interrogatories. And if they answer my first set of interrogatories, then I don't have to. So I --

THE COURT: You don't have to what?

MS. SHIM-LARKIN: -- I have no idea if I'm going to even try to actually find experts or not. I'm not sure; it's hypothetical.

THE COURT: I'm sorry, I didn't understand what you were saying to me. Could you repeat it, please?

MS. SHIM-LARKIN: My motion -- what I just said?

THE COURT: Yes.

MS. SHIM-LARKIN: Because the expert witness regarding the (indiscernible) expert witness, I'm not sure if I need that expert witness or not because it's also related to my first set of interrogatories. Because in the first set of interrogatories I requested -- one of the interrogatory question asks for specific videos. But I do not get the answer; I only got the evasive answer. So it's pending motion -- if there's a pending motion, I think it's letter I wrote on October 24. So if they answer my first of interrogatories like real answer, not evasive answer, then I don't think I'm going to need the expert witness -- expert witness regarding the (indiscernible).

THE COURT: Okay.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

21

MS. SHIM-LARKIN: I don't know if I actually need that or not. I don't know yet.

THE COURT: All right. Well, since you raise the October 24, 2017, writing, let me turn to that now. That's a motion to compel and for sanctions. Local Rule 7.1(d), which permits letter motions, doesn't contemplate the type of relief that you were requesting through that letter, and you will have to make a formal motion under Rule 37 or whatever other rules or statute you think are appropriate to obtain the relief that is discussed in the October 24, 2017, writing.

If you want to make such a motion, you should do so on or before December --

MS. SHIM-LARKIN: I do not understand. If I do make motion for sanction?

THE COURT: Your letter motion dated October 24, 2017, seeks relief that is beyond that which is permitted by letter motion under Local Rule 7.1(d) of the court. So if you want the type of relief you expressed in the October 24 writing, you will have to make a formal motion under Rule 37 or whatever other rules or statute you want to make a motion to attempt to obtain that relief.

MS. SHIM-LARKIN: The only thing -- because -- well, some of them are 26 and 37. I mean, if it's for

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

22

1927, I understand, but I don't understand about Rule 26 and 37.

THE COURT: Well, I am not here to give you legal advice, but your letter is a motion to compel, which is addressed by Rule 37; and you're seeking sanctions, and that's all discussed in that writing, but it's an improper vehicle, the letter motion, to obtain the type of relief you say you want through that letter. And to obtain that relief you have to make a formal motion, if you want.

MS. SHIM-LARKIN: So the four part about sanction?

THE COURT: I'm sorry? I didn't hear you clearly.

MS. SHIM-LARKIN: The four part of the sanction, your Honor.

THE COURT: I'm not --

MS. SHIM-LARKIN: Four part of sanction.

THE COURT: When you say the "four part," I don't understand what you mean.

MS. SHIM-LARKIN: The whole -- whole, the entire part of sanction.

THE COURT: Oh, yes?

MS. SHIM-LARKIN: Okay.

THE COURT: Not only that, you ask that certain

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

23

things be provided, that the Court compel the defendant to provide you answers to your interrogatories. You want a judgment based on liability. All of the things you raise in that letter have to be sought through a formal motion.

MS. SHIM-LARKIN: I see. So the entire letter, your Honor?

THE COURT: All the relief you seek through that letter should come -- should be sought through a formal motion.

MS. SHIM-LARKIN: Okay.

THE COURT: So if you intend to make a motion, you should make the motion by the 8th day of December 2017.

MS. SHIM-LARKIN: By -- schedule on is December 8?

THE COURT: 2017. If you elect to make a motion seeking the relief outlined in your October 24, 2017, letter. And the response and the reply to the motion should be made in accordance with Local Civil Rule 6.1 of the court.

Turning now to the November 6, 2017, writing, with respect to the demands Nos. 1 and 2 made by the plaintiff, the defendant cannot construe the plaintiff's document demands to permit the defendant to rewrite them

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

24

so that they conform to what the defendant believes the demand should be and what the defendant wants to disclose. So the plaintiff alleges that the responses to these demands are in part boilerplate and not specific as required by Rule 34. And I agree with her that they are not specific and do amount to a boilerplate response.

Also, the defendant placed the temporal limitation on the two demands other than the temporal limitation that the plaintiff placed on her demands without any explanation for doing so. And that's not proper.

The plaintiff -- well, all parties, plaintiff and defendant, are free to decide what information each party wants that is, to the party's way of thinking, relevant to the claims and defenses and should be pursued in discovery. And it's not the place of any party to countermand the decisions made by the other about what information is necessary for a particular party to either prosecute or defend a case. If the matters that are sought are without the rules, then the matter can be brought to the Court if the parties, after conferring, are unable to resolve the matter themselves. And then the Court will determine whether the requested information is within or without the applicable rules and will give the

1 parties direction.

2 MS. SAINT-FORT: Your Honor, if I may?

3 Defendant's response to these communications, we did put a
4 temporal limitation on them in that plaintiff is requested
5 information for a two-and-a-half-year period where her
6 full period of employment with the City of New York was a
7 six-week period of the relevant summer, and this case was
8 a six-week period. So it seems the request was quite
9 broad, and that's why we limited it to the time frame in
10 which she was working.

11 MS. SHIM-LARKIN: Well, your Honor, I
12 (indiscernible) because that's a place that's concerning
13 plaintiff and/or Tompkins Square Mini Pool. So if it's
14 concerning plaintiff, it doesn't matter when; it's still
15 relevant.

16 THE COURT: As I indicated, no party should be
17 deciding for the other what the party's discovery demand
18 should be. If there's a problem that one party believes
19 exists with respect to the other party's discovery
20 demands, you're to confer about that. If the parties
21 cannot resolve it, the matter should be brought to the
22 Court, and the Court will give the parties directives.
23 But you can't unilaterally decide one party for the other
24 what that party should have to prosecute or defend in the
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

26

action.

I want to move now to an objection the defendant lodged to a request for a complaint worksheet report No. 2015-009-04416, Bates No. NYPD 001 to 004. The objection was lodged on relevance grounds, but it's not specific what it is that is not relevant in the view of the defendant. That is a document it seems like pertains to the plaintiff's encounter at the precinct with a PAA, as we discussed earlier in the conference. And why is that document not relevant and the request pertaining to that document, that worksheet for the complaint report, not relevant?

MS. SAINT-FORT: Well, it's not relevant in that plaintiff has the complaint in the matter. This is not a criminal case; this is a case of -- this is an employment law case. Plaintiff has been -- the complaint that resulted from plaintiff going to the 13th Precinct and lodging a complaint based on an encounter with her coworker is the complaint that she received. There are a number of requests that plaintiff is making about the police department, and it's turning this into a concern about the police department, which is not the issue in this case.

But beyond that, defendant has -- as we

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

27

indicated, the plaintiff has looked into this document and was searching for it. It's been followed up on for a number of weeks, and the information that I received just this morning is that PAAs are civilian officers; they're Police Administrative Assistants, and they're not assigned memo books, which is the document that plaintiff is seeking in this complaint report based on the guidelines in the Patrol Guide. So there is no memo book that is associated with plaintiff's complaint. The only document that exists is the complaint.

THE COURT: I thought that Ms. Shim-Larkin --

MS. SHIM-LARKIN: I --

THE COURT: -- had moved beyond the request, understanding that there was no memo book, and that's why she wanted whatever materials are pertinent to this worksheet, complaint worksheet, which is, I think, attached to a part of the complaint report. And this report or complaint that results in this complaint report arises out of the workplace encounters that are the subject of this action. So no one's claiming that it's a criminal case, but Ms. Shim-Larkin went to the police as a result of conduct she alleges was perpetrated against her at her workplace and is part and parcel of her allegations in this lawsuit about discrimination and all arising out

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

28

of her encounters with her coworkers at the pool. So I think that the documents that she's seeking are certainly relevant as described in her complaint. So if they exist, they should be provided to Ms. Shim-Larkin as quickly as possible.

Just one moment. I need to check my notes.

There was a reference about the retaining of videos in this November 6 writing, but we discussed that earlier.

Oh, yes, Ms. Shim-Larkin, you had complained about the verifications that accompanied the interrogatory answers, and I was somewhat puzzled by that because you make reference to the pertinent rule that indicates that the person answering an interrogatory must sign it. But you seem to take umbrage that the persons who signed it, there should be additional people signing it, without any indication that other persons were answering the interrogatories. So I was not clear why it is that you think other people should be signing the interrogatories other than the persons who claim to have answered them.

Ms. Shim-Larkin?

MS. SHIM-LARKIN: Yes.

THE COURT: Did you hear my question?

MS. SHIM-LARKIN: We are talking about the

1 PROCEEDINGS 29

2 interrogatories dated July 25?

3 THE COURT: Correct.

4 MS. SHIM-LARKIN: Yes. I think I asked for
5 specific parts of Ms. Vargas' interaction, and I don't
6 think I received the information about those employees
7 because for answers -- I don't think that Ms. Vargas -- I
8 don't think defendant is going to admit what Ms. Vargas
9 says is correct. I expect that they are going to say that
10 it's not correct. So if Ms. Vargas says that that's what
11 she says, that's what she complains, and then
12 (indiscernible) which is very different. So I want to
13 interview those people who interacted with Ms. Vargas so
14 maybe they remember certain things that was not in the
15 complaint report.

16 THE COURT: I was asking something different.
17 You complain about the verification for interrogatories.
18 And you make citation to the rule that indicates that a
19 person who's answering an interrogatory has to sign it.
20 And if the persons who answered the interrogatories are
21 the ones who provided the verifications, why are you of
22 the view that other people who did not answer --

23 MS. SHIM-LARKIN: Well, I think --

24 THE COURT: -- the interrogatories should be
25 signing them or submitted verifications?

1 PROCEEDINGS 30

2 MS. SHIM-LARKIN: Yeah, I think the answer,
3 interrogatory answer, has to be signed by someone and
4 someone who's at least reasonable and someone --

5 THE COURT: What does that mean?

6 MS. SHIM-LARKIN: -- that -- employee --
7 employee. That's why -- because the verification even to
8 me was Parks Department Commissioner. But some employees
9 are not Parks Department Commissioner. I mean, some of
10 the employees are not from Parks Department. So I don't
11 understand how Parks Commissioner is reasonable person who
12 can sign the interrogatory answers.

13 THE COURT: If that is the person who answered
14 the interrogatory, then that is the person who has to sign
15 it. The --

16 MS. SHIM-LARKIN: Well, he has to --

17 THE COURT: -- defendant is -- the defendant --

18 MS. SHIM-LARKIN: -- take the --

19 THE COURT: -- is an inanimate object. It's a
20 government entity, and they have one or more of its
21 employees assigned to answer interrogatories on its behalf
22 and sign it. Because you would like other people to sign
23 doesn't place an onus on the defendant to have other
24 people sign the answers. The person who have answered are
25 required to do that and no one else. It may be that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

31

through additional employment of other discovery tools you'll find out why certain persons signed the interrogatories as opposed to others who you think might be the best candidate to sign an interrogatory, but that remains to be seen.

Also, you were commenting on this -- I'll get to it now -- and that is the response for identifying information for the 911/311 operators, the enforcement, Parks enforcement personnel, and official you identify as a "pregnant person." And you take umbrage at the failure to get that information. Given that Ms. Shim-Larkin contends that the interrogatories were not responded to timely, a matter, as I said earlier in the conference, has already been addressed and been the subject of an order by the Court, why if there are objections being lodged, why are they being lodged when responses to the interrogatories are not timely?

MS. SAINT-FORT: First, if I may, your Honor, the responses to these objections were in fact timely. The prior person, corporation counsel, who was working on this case entered into an agreement with plaintiff, as memorialized in an email, that she would allow us to respond to those -- to the interrogatories -- this interrogatory dated July 25, 2017, in addition to an

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

32

August 4, I believe, 2017, interrogatory on September 22, 2017, which is when defendant responded to her interrogatories. So we would disagree that the response to the interrogatory was untimely or that our objections were waived.

Furthermore, we've provided plaintiff with the identifying information for individuals listed in her interrogatory, including Martin Kravitz, Eric Love, Miguel Morales, as well as Jennifer Navarro. In terms of the two Parks Enforcement patrol officers who arrive at Tompkins Square Mini Pool in response to the complaint that she's stating is the complaint by Mrs. Vargas, on the complaint form it indicates that the Department of Parks and Recreation did not dispatch any additional persons to the scene. And the only officer that we have a record of who was present at that time is Eric Love, who is an individual that she named and information that we provided to her. And --

MS. SHIM-LARKIN: Your Honor, I --

MS. SAINT-FORT: -- (indiscernible)

THE COURT: Ms. Shim-Larkin, just a moment.

MS. SAINT-FORT: Thank you.

With regard to the 911 operator and the 311 operator, we don't have the information or don't

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

33

understand -- excuse me. As to the 911 operator and the 311 operator, our response to that is it's irrelevant who the operator was, as Ms. Shim-Larkin had the actual complaint that was generated from that call. Additionally, the description of a female employee who was visibly pregnant on July 21, 2015, is -- and she states is a director or a commissioner, that information hasn't been able -- we haven't been able to discern who that person is based on that vague description. So there is no identifying information that we can provide to plaintiff because we haven't been able to determine who that person is based on her description.

MS. SHIM-LARKIN: Your Honor, I want to make it clear that defendant did not write two Park Enforcement patrol officers are at Tompkins Square Mini Pool it does not exist, she -- I mean, the defendant did not state it in a written form. So unless they have to write in a written form and somebody has to sign it and confirm that there was no two Parks Enforcement patrol officers who are at Tompkins Square Mini Pool, but they did not -- they did not do that. Also, I told them at the police department that they should talk to them.

So I think if they couldn't find them, that they have to provide for details as stated and they make some

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

34

reasonable steps if they have -- took the reasonable steps and what was those reasonable steps. And I think it's same for 911 operator or 311 operator; I think they have to set forth the details as stated and what efforts was taken by defendant to locate those individuals. And if they couldn't find them after reasonable steps, then it has to be in a detailed affidavit.

And then Ms. Vargas Martin Kravitz introduced Ms. Vargas to that female employee who was visibly pregnant, so I think at least they have to ask Martin Kravitz. And if Martin Kravitz does not remember, then they have to write and sign it.

THE COURT: On the issue of the 311 operator, I don't know why the defendant's position is that that person's identity is irrelevant, given that Ms. Shim-Larkin has challenged the accuracy of the complaint recorded in the 311 complaint form, given the statements made by Ms. Vargas about what her complaint is or was -- excuse me -- in some detail in an affidavit. So to the extent that there is a conflict about what was reported and what was recorded by the 311 operator, it is relevant.

With respect to the inability to identify the person who is said to have been the pregnant parks official or that no enforcement personnel were dispatched

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

35

to the park -- pool -- excuse me -- it may be that no one was dispatched, but that doesn't mean that someone wasn't on the scene. But, in any event, I think that it would be appropriate, as Ms. Shim-Larkin is suggesting, to have a supplemental response that indicates, as you indicated to me moments ago, that the investigation by the defendant has not yielded the identity of the pregnant park official and that no enforcement personnel from the defendant's vantage point were present at the pool on the 25th of July or whatever the operative date is so that that is clear. And Ms. Shim-Larkin can challenge that at trial or in motion practice or whatever she wants to do with that information.

Similarly, Ms. Shim-Larkin, if you believe that Mr. Kravitz has information that would identify the pregnant park personnel or confirm for you that there were enforcement personnel on the scene, nothing prevents you from submitting through discovery a demand on Mr. Kravitz to confirm that information or provide the identity, if he knows it. So you're free to do that, if you wish.

The last thing I want to raise with respect --

MS. SAINT-FORT: Your Honor -- I'm sorry -- if I may, on the interrogatory that we were just discussing?

THE COURT: Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

36

MS. SAINT-FORT: Defendant had an objection based on relevance, as well, to the 911 operator. Is it your position that that has to be provided, as well?

THE COURT: I was not altogether certain whether there is an independent 911 call that's made on or about July 25.

MS. SAINT-FORT: Well, as I understand it, what happens is a person may call 911 to report a certain issue that the 911 operator may then find is more appropriate for 311, a 311 issue, and transfer them that way. There's no indication that a 911 call exists with regard to the issue that plaintiff is complaining about in this interrogatory.

MS. SHIM-LARKIN: Your Honor --

THE COURT: Then in the supplemental response I think that that should be made known so that puts that matter to bed and it doesn't remain an issue for debate and dispute going forward.

MS. SAINT-FORT: Okay.

THE COURT: Just one moment. I'm checking my notes again.

Oh, on the issue of the writing sent by your predecessor to Ms. Shim-Larkin, she contends that that writing is vague and that it does not specifically speak

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

37

to the issue of objections and whether Ms. Shim-Larkin is not going to be contesting objections notwithstanding her desire to receive, albeit late, responses to her discovery demands. And she contends that the drafter of a document, if it is ambiguous, has to suffer the consequences of an ambiguous document. And her position is that she did not, in saying a response could come late, address at all the issue of objections. What is the defendant's position on that?

MS. SAINT-FORT: If plaintiff agrees that defendant can respond to an interrogatory at a certain date, that response includes what would be plaintiff's objections or responsive documents or other statements that would be included in a full response to her interrogatory. Without specifying that information to either Mr. Silverman orally or in writing, there was no indication on defendant's part that we would not be able to lodge our objections. Absent that information, our responses, including the objections, were timely.

MS. SHIM-LARKIN: Except that he did not state that included objection. So I think what she said is completely baseless. There's no law about that.

MS. SAINT-FORT: Our position is that if we are to respond to an interrogatory the full response as we

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

38

would give it were it timely, within 30 days based on the date that it was served or at a date which the parties agree that the responses would be made includes the responsive information, which may include objections if there are any appropriate objections to that interrogatory.

MS. SHIM-LARKIN: Your Honor, the --

MS. SAINT-FORT: I don't see any basis for a part being out when objections can be lodged versus when only a response can be lodged when a response includes objections where appropriate.

MS. SHIM-LARKIN: Your Honor, Scott Silverman, when we talked -- when I talked with Scott Silverman, he did not say anything about objections. And if he asked about objections, then I probably wouldn't agree.

MS. SAINT-FORT: Right. But what we can see from plaintiff's response is that plaintiff did not say anything about not accepting objections. What she allowed was a response.

MS. SHIM-LARKIN: No, the --

MS. SAINT-FORT: And the response includes an objection.

MS. SHIM-LARKIN: -- except that is the one who is making exception to the law, then of course the burden

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

39

is on defendant. The law says it has to be answered within 30 days; otherwise, all objections are waived. And defendant is trying to make an exception. And burden is on defendant. And I don't have to say anything.

MS. SAINT-FORT: Well, that's not necessarily the case that if your response or objection is not made within 30 days that they're automatically waived; that's a discretionary determination that a judge can make. So it's not within the federal rule contemplating that automatically once a response is made untimely, that your objections are certainly waived. So --

MS. SHIM-LARKIN: No, that's what it says on the -- it says in the law that if interrogatory is not answered within 30 days, then it is waived. And then besides, the email was written by Scott Silverman, and then if they said it has to be interpreted in the (indiscernible) of the drafting party.

THE COURT: When you confirmed your understanding that the response could come in September, you did not indicate anything about opposing the assertion of objections in the response. But now you seem to want to communicate that the response should be a limited response and that's all that you expected. I don't understand why you take that position, having confirmed

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

40

your agreement that the response, whatever the response would be, could come in September, Ms. Shim-Larkin.

Did you hear me, Ms. Shim-Larkin?

MS. SHIM-LARKIN: Yes.

THE COURT: What is the answer to my question?

MS. SHIM-LARKIN: Oh, I said he just -- he just want me to wait for the answers, so I said okay, I can wait for the answers. So I didn't expect that they're going to object. I had no clue about objection, and he --

THE COURT: Why is that the case given that the defendant had been objecting throughout the process to discovery demands that you'd been making?

MS. SHIM-LARKIN: So I think at the point I made the motion about the first set of interrogatories, that in the motion I said if it's not answered within 30 days, then it's waived. So I thought because he had received that letter motions, I thought he was aware of the rule that interrogatory objections are waived within 30 days. So I thought he already understood that. So I thought that's why he didn't talk about objection.

THE COURT: All right, well, I think that the parties' agreement was to receive the response from the defendant, whatever the response was, in September and not that the response would be a limited response, that is, a

1 PROCEEDINGS 41

2 response without the assertion of any objection. So I
3 think, based upon the agreement of the parties, that the
4 responses came timely.

5 Let me turn to the last matter, which is the
6 deposition controversy, the amount of time.

7 MS. SHIM-LARKIN: Your Honor, I have an attorney
8 for depositions. I'm not really comfortable talking about
9 deposition by myself.

10 THE COURT: All right. That's fine. I'll --

11 MS. SHIM-LARKIN: But I want to say that this is
12 wholly inappropriate, and I think that it has to be
13 finished because --

14 THE COURT: Just a moment.

15 MS. SHIM-LARKIN: -- because --

16 THE COURT: Just a moment. What is
17 inappropriate?

18 MS. SHIM-LARKIN: Because defendant did meet and
19 confer to a deposition, and they --

20 THE COURT: Just a moment. Just a moment. Just
21 a moment. Ms. Shim-Larkin, you just told me that --

22 MS. SHIM-LARKIN: -- know that --

23 THE COURT: Ms. Shim-Larkin -- Ms. Shim-Larkin,
24 you just told me you don't want to talk about the
25 deposition.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

42

MS. SHIM-LARKIN: Yes.

THE COURT: And so let's not do that. We'll have your counsel address that.

Okay.

MS. SHIM-LARKIN: Okay.

THE COURT: All right, those are the matters I wanted to raise with you this afternoon. Thank you very much. Good day.

MS. SAINT-FORT: Thank you, your Honor.

(Whereupon, the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of Shim-Larkin v. City of New York, Docket #1:16-cv-06099-AJN-KNF, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: November 28, 2017